

Appendix 3. Kailua Bay (Island of Oahu) Focus Site Report

Kailua Bay (Island of Oahu) Focus Site Report

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1. CONTEXT

A site map and a description of the Kailua Focus Site and recreational activities occurring there are given below. This is followed by a description of commercial ocean recreation operations occurring at Kailua Beach Park. County ordinances and state regulations pertaining to commercial ocean recreation activities are then summarized, followed by a description of the Kailua Neighborhood Board motions pertaining to commercial activities and kiteboarding at Kailua Beach Park.

1.1 Site Description and Recreational Activities Occurring at Kailua Beach Park

Kailua Beach is a county beach park with three main parking areas, restrooms, showers, picnic tables, a snack bar, a lifeguard station, and an area where outrigger canoes are stored. Ocean recreation activities occurring there include surfing, boogie boarding, swimming, paddling (outrigger canoes), kayaking, kiteboarding, windsurfing, boating, and fishing. Commercial ocean recreation activities occurring at Kailua Beach include kayak tours, snorkel tours, and kiteboarding (also called kitesurfing) and windsurfing lessons. Kailua Bay is a safe place for beginners because the winds blow primarily onshore and there is a mostly sandy substrate in the nearshore waters. Sunbathers and beach walkers (some with dogs) also use the beach. Very few SCUBA activities occur in Kailua Bay due to the primarily sandy bottom. Outrigger canoes are a common sight at the park, and several regattas/competitions are held at Kailua Beach Park throughout the year. Canoes are launched from the river drainage area/canal (by the bridge) and from access points in Lanikai. Although there are more than half a dozen access points in Lanikai, much of the shoreline is hard-walled. Most of the canoes, therefore, use the more sandy access points in the northern part of the Lanikai neighborhood. A boat ramp is located south of the bridge, next to a small parking area and restrooms. Just south of the boat ramp, on the small hill that separates Lanikai from Kailua Beach Park, is a popular fishing spot. There is also some limited fishing from Popoia (Flat) Island.

Kailua Beach Recreation Area, Oahu, HI

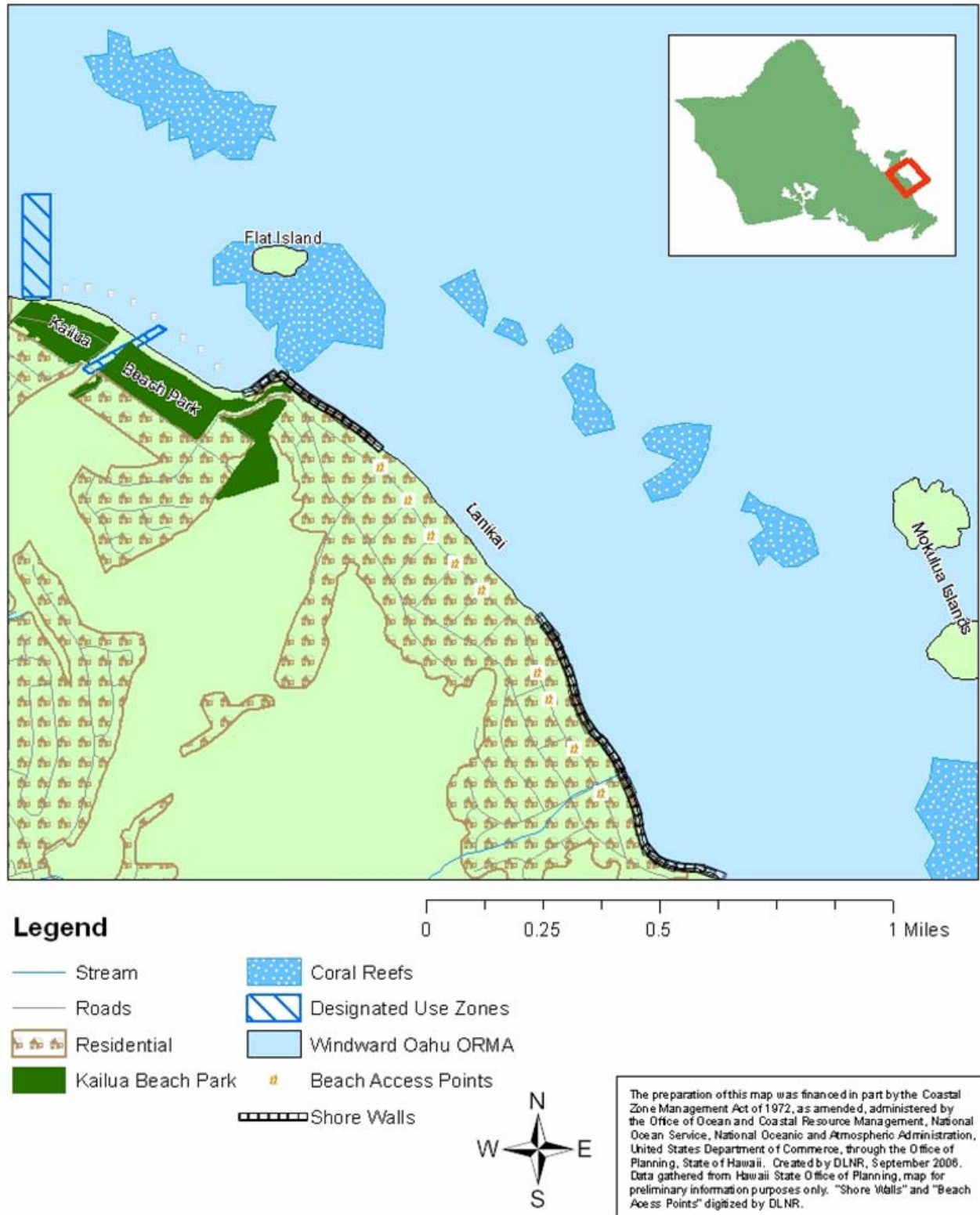


Figure 1: Kailua Site Map

Kiteboarders and windsurfers primarily launch from the designated ORMA windsurf launch zone at Kailua Beach Park. This launch/land zone is located downwind of the swim zone so that, if in trouble, beginners and their equipment will be blown onshore and away from the swim zone. Kayaks also launch from this zone. More advanced kiteboarders and windsurfers take advantage of the outer reef break. Others stay closer to shore and may traverse all around and close to Popoia Island.

The offshore islands in Kailua Bay (Popoia Island and the Mokulua Islands) are state sanctuaries and attract a variety of different ocean recreation users. Popoia Island is a popular place for kayakers, who land their kayaks on the one small sandy cove available. There is a shallow hard reef bottom with a prevailing current that pulls into the rocks and shallow water. Some kayak tour guides attempt to have their inexperienced clients surf these waves in kayaks, which can create a safety hazard if they are unsuccessful and flip over. The back side of Popoia Island can be rough and dangerous. Waves generated off to the east side of the island provide a surf break for surfers. Advanced swimmers enjoy swimming from Kailua Beach Park out to Popoia Island and back.

The Mokulua Islands, located about a mile away from the center of Kailua Beach Park, are a seabird sanctuary for wedge-tailed shearwaters. Rules for the sanctuary include no dogs, no fires, and no camping. Ocean conditions can be very rough; open ocean swells hit the back of the islands, and wrap around, sometimes converging in the middle of the two islands. The northern-most island is a popular destination for kayak tours. The sandy beach there is used as a kayak landing and launching area. Privately-owned power boats periodically come close to shore near the sandy beach to drop people off onto the island. There are, therefore, times when there are large numbers of people on the island at once. Some people hike around the back of the island, although it is an extremely steep and dangerous wave-impact zone. Several people have drowned at the Mokulua Islands, either from being swept off the rocks by high waves on the back of the island, or from getting tipped over in their kayaks in the turbulent waters surrounding the islands.

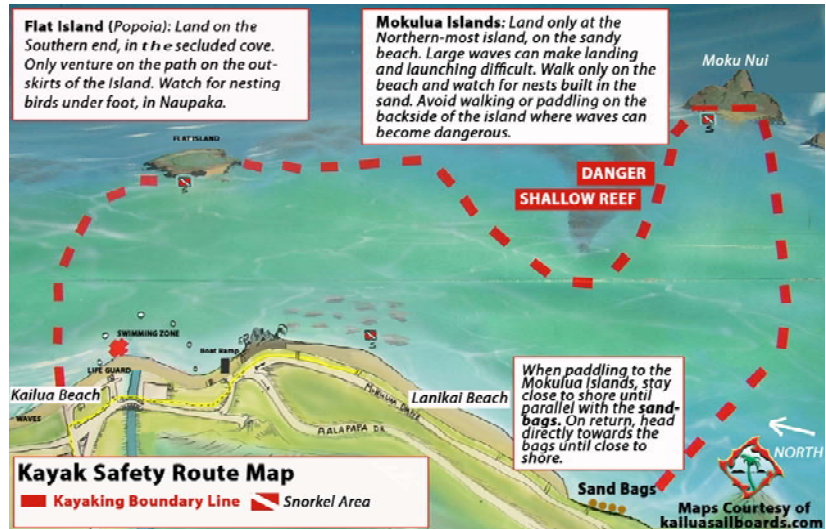
1.2 Commercial Ocean Recreation Operations at Kailua Beach Park

Public access areas and other park infrastructure being used by commercial operators include Kailua Beach Park, the boat ramp, the canal areas, Popoia Island, and the Mokulua Islands. Activities include parking delivery vehicles, dropping off passengers and equipment, and leading tours/lessons in state waters. Tours include kayak tours, separate snorkel tours (no kayaks), and kiteboarding and windsurfing lessons. These activities are occurring daily from 8:00 am to 6:00 pm, with peak use times between 10:00 am to 4:00 pm. The busy seasons are from June through August and from mid-December to mid-January.

Examples of dangerous, inconsiderate, and/or illegal tour protocols being used include no safety or environmental briefings, use of the beach parking lots for several hours, taking up all of the landing space on the small beach at Popoia, too many guests per guide, taking tours in unsafe weather conditions, advertising along the roadside, etcetera.

Examples of good business protocols being used by one or more companies, but not being systematically used by all companies, include:

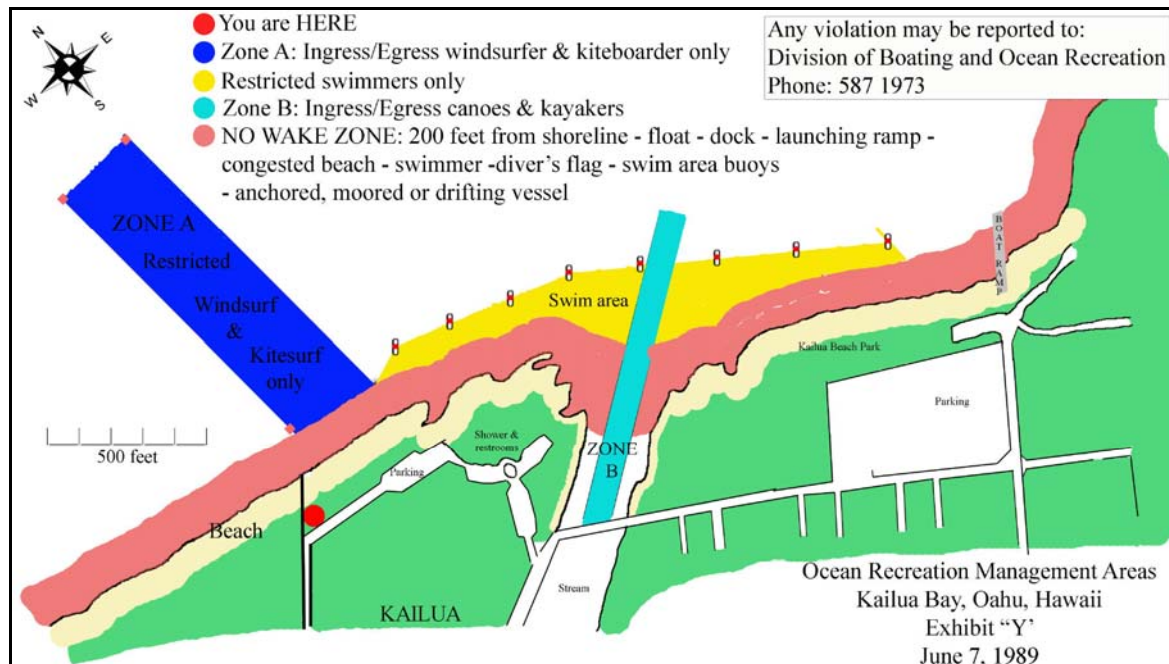
- Landing kayaks one at a time at the Mokulua Islands (an extra safety precaution since waters can unexpectedly become rough)
- Presenting a pre-trip safety video that's available in two languages (English and Japanese) and maps of safe routes to follow,
- Presenting pre-trip environmental briefings to encourage stewardship behaviors,
- Presenting pre-trip cultural briefings (accompanied by education materials the guest can take home),
- Limiting drop-off and pick-up times to half an hour each,
- Confining tours to a certain number of hours,
- Limiting the guest-to-guide ratio,
- Limiting the number of tours per day,
- Requiring all guides to have current First Aid and CPR certifications,
- Requiring guests to wear PFDs (Personal Floatation Devices),
- Staggering tour launch times with other businesses to avoid congestion during tours/lessons,
- Shuttling guests and having guests walk their own kayaks to the beach to avoid overcrowding public parking areas at beach parks,
- Making sure guides have quick access to safety equipment,
- Having multiple guides so that one-on-one help is available if someone gets in trouble, and
- Checking wave buoys and the National Weather Service forecast daily.



Some additional measures initiated by Kailua ocean recreation businesses and sports clubs include education outreach efforts and the establishment of gentlemen's agreements.

The Oahu Kite Club (OKC) is a non-profit dedicated to keeping kiteboarding safe and preserving access for kiting in Hawaii. They have created T-shirts, signs, and fliers educating kiteboarders how to operate with safety and consideration of other beach users. They have exerted peer pressure on "bad apples" and had success getting some to move out of the area. In addition, OKC tries to accommodate the canoe clubs by urging kiteboarders to stay off the water during regattas. They are also working with the DLNR, DOBOR to create signage better delineating ORMA use zones. The draft sign prepared by the Oahu Kite Club and DOBOR for Kailua Bay is an example of an improvement upon the original Kailua Bay ORMA map from June 1989 presented in the Hawaii Administrative Rules. The sign is meant to be posted on-site near the ORMA windsurf launch/land zone. In addition to the sign, OKC is asking DOBOR to place buoys to delineate this windsurf ingress/egress zone in order to improve safety, reduce user conflicts, and increase awareness among beachgoers of the existing use zone. Although

the rules (HAR §13-256-20) refer to it as a “windsurfing” zone, the term used in the actual definition is “sailboard,” which is any board propelled by the force of the wind through the use of a sail, which applies to both windsurfing and kiteboarding.



Draft sign being prepared by Oahu Kite Club and DLNR, DOBOR

1.3 Regulation of Commercial Ocean Recreation Activities

City and County Ordinances

The City & County of Honolulu, Department of Parks and Recreation has jurisdiction over the land uses at Kailua Beach Park. County ordinances from Chapter 10, “Rules, Regulations, Charges and Fees for Public Parks and Recreation Facilities” that apply to Kailua Beach Park and ocean recreation uses occurring there are:

No sale of any services or merchandise on public park land

- Section 10-1.2 Park rules and regulations “(b) Except as authorized by permits, and subject to the terms and conditions imposed by the department of parks and recreation, it is unlawful for any person, within the limits of any public park, to: (2) Sell or offer for sale any services, merchandise, article or thing, whatsoever”

Permits are required for commercial activities using public beach areas for profit

- Section 10-1.3 Permits “(a) Required. Any person using the recreational and other areas and facilities under the control, maintenance, management and operation of the department of parks and recreation shall first obtain a permit from the department for the following uses: (10) Commercial activities designed for profit, which include but are not limited to the exchange or buying and selling of commodities, or the providing of services relating to or connected with trade, traffic or commerce in general...The proposed commercial activities under the permit shall be consistent with the use of the park under consideration, subject to reasonable limitations on the size of the groups, and the time and area within which the event is permitted.

Outrigger canoe storage is permitted at city parks

- Section 10-2.5 Canoe storage facilities “(a) Policy. The council finds that Hawaiian outrigger canoe paddling is the official state team sport and, as such, the city recognizes, supports and encourages the sport by permitting the storage of outrigger canoes at city parks. The council further finds that Olympic canoe and kayak paddling are Olympic sports and, as such, the city recognizes, supports and encourages those sports by permitting the storage of Olympic canoes and kayaks at city parks.” Special conditions applying to the establishment of halaus at city parks include that they may only be constructed “at park locations designated by the department of parks and recreation” and “the use of halaus shall be controlled and monitored by the department...” Section 10-2.6 states that the department is “authorized to issue permits and set fees and charges for the use of the halaus, including the setting of nominal fees to cover operating expenses.”

Permit fees for commercial scuba diving and snorkeling

- Section 10-3.1 Commercial scuba diving and snorkeling “Scuba diving and snorkeling activity: (a) Annual permit: \$900.00; (b) Monthly permit: \$75.00; (c) Daily permit: \$10.00.”

Permit fees for commercial filming

- Section 10-3.2 Commercial filming activities See the county ordinances for the fee table

Definitions relating to commercial windsurfing county ordinances

- Section 10-5.1 Definitions “ ‘Commercial windsurfing permittee’ means those persons or business organizations who have a valid permit from the department of parks and recreation to conduct land-based commercial windsurfing activities at Kailua Beach park.” And... “ ‘Land-based commercial windsurfing activities’ means activities conducted in the course of a commercial windsurfing business and includes setting up or breaking down windsurfing equipment, conducting simulated windsurfing instruction and training on land, and... laying windsurfing equipment on the ground.”

Windsurfing: Specified days/hours of operation

- Section 10-5.2 Regulation of land-based commercial windsurfing activities “The following conditions shall govern commercial windsurfing activities on the grounds of Kailua Beach park: (a) Commercial windsurfing permittees shall not conduct land-based commercial windsurfing activities in Kailua Beach park on all holidays and during the hours from one p.m. on Saturdays to sunrise on Mondays. (b) Commercial windsurfing permittees shall be prohibited from conducting land-based commercial windsurfing activities within Kailua Beach park except in the area within the park ...[as] described...”

Windsurfing: Enforcement fines for first, second, and third offenses and permit revocation

- Section 10-5.3 Enforcement “(a) Police officers shall issue a citation for any violation under this article, except that they may arrest any person for a violation under this article when any of the conditions specified in Section 10-1.6 exist... (b) Any commercial windsurfing permittee cited for violating this article shall be fined \$25.00 for the first offense, \$50.00 for the second offense and \$100.00 for

the third offense within one calendar year. In addition to the fine for the third offense committed within a year, a commercial windsurfing permittee shall have the permittee's permit revoked by the department of parks and recreation. Upon revocation of the permit, such commercial windsurfing permittee shall not be eligible for another permit until the expiration of one year from the date the permit was revoked.”

Permit fees for land-based commercial windsurfing activities

- Section 10-5.4 Fees for land-based commercial windsurfing activities “(a) The following fees shall apply to windsurfing activity permits: (1) Ten dollars for daily permits; (2) Seventy-five dollars for monthly permits; and (3) Nine hundred dollars for annual permits. (b) The director of parks and recreation is authorized to adopt rules to allow for the rebate of the unused portion of an annual permit fee, on a pro rata basis, should a commercial windsurfing permittee voluntarily relinquish the permittee's permit.”

In 1993 the County issued a temporary permit to one kayak company for the drop-off of kayaks at Kailua Beach Park. While there is no county law against renting kayaks off-site and dropping them off at the park, this company wanted to obtain a permit for those activities and worked with the County and the Kailua Neighborhood Board over a five year period to do so. The company operated under this temporary permit for over ten years, and during that time other companies also began operating under temporary permits. In 2004 the permits were pulled and have not been reinstated.

The county has one concessionaire, a snack bar, operating with a county permit at Kailua Beach Park. The County may regulate “bouncers” (i.e. large inflatable toys for jumping on) to limit areas where they could be set up. Rules are drafted and being reviewed by the Corporation Council.

State Rules and Regulations

The State of Hawaii Department of Land and Natural Resources has jurisdiction over the waters of Kailua Bay, up to the high wash of the wave. Within its jurisdiction the State regulates operators of commercial vessels, water craft, and water sports equipment (this includes surf instructors). Both commercial and non-commercial uses are regulated in the Windward Oahu Ocean Recreation Management Area (ORMA).

Commercial Operator Permits

The Hawaii Administrative Rules, Part III (Ocean Waters, Navigable Streams and Beaches), §13-256-3, state that “All operators of commercial vessels, water craft or water sports equipment shall apply for a commercial operator permit to be issued by the department.” Currently, however, there are no State permits issued for commercial use of water sports equipment in Kailua Bay. The reason for this lies in the rest of §13-256-3, in the sentence immediately following the one quoted above. This second sentence is as follows: “The applicant for such permit shall comply with the applicable provisions stated in Hawaii Administrative Rules, and Ocean Waters, Navigable Streams and Beaches, Sections 13-251-1 through 13-251-20.” The significance of this sentence is that it refers back to Chapter 251, which is titled “Waikiki and Kaanapali Ocean Waters.” While many State and County officials have said that they feel the intent of Chapter 251 is that it applies statewide, others, including some of the commercial ocean recreation

operators in Kailua, say these Chapter 251 rules do not apply anywhere in the state except for Waikiki and Kaanapali.

ORMA Use Zones

Ocean Recreation Management Area (ORMA) use zones regulate both commercial and non-commercial uses. Designated ORMA use zones at Kailua Beach include a swim zone, a windsurfing launch/land zone, and a kayak and canoe launch/land zone. Only the swim zone is currently marked with buoys. The Hawaii Administrative Rules, Part III, §13-256-74 specifies these zones in “Kailua Ocean Waters Restricted Zones.” Zone A is designated an ingress/egress zone for windsurfing. “No person shall operate a motor vessel and no person shall swim in the zone when used by windsurfers.” This zone extends 300 feet along the shoreline (in an area paralleling part of the parking lot located north of the bridge) and extends out seaward for 1,150 feet at an angle of 180 degrees from True South (see Figure 1). Zone B is designated an ingress/egress zone for manually propelled vessels (such as kayaks and outrigger canoes). “Swimming in the zone is prohibited when in use by vessels.” This zone begins at the bridge, is 100 feet wide and stretches seaward 1,000 feet.

ORMA Recreation Advisory Committees

According to §13-256-3 (b), Recreation Advisory Committees are to be established by the department for each designated ORMA. The DLNR, DOBOR, is currently establishing a Recreation Advisory Committee for the Windward Oahu ORMA.

Wildlife Sanctuaries

Wildlife sanctuaries are established for the conservation, management, and protection of indigenous wildlife and are managed by the DLNR Division of Forestry and Wildlife. The Hawaii Administrative, §13-125-4, “Wildlife Sanctuaries” states, “Prohibited activities. (a) The following activities are prohibited within wildlife sanctuaries, except for agents of the board and except as authorized by the board or its authorized representative: (1) To remove, disturb, injure, kill, or possess any form of plant or wildlife; (2) To possess or use any firearm, bow and arrow, or any other weapon, trap, snare, poison, or any device designed to take, capture, or kill wildlife; (3) To discharge any weapon on or into a wildlife sanctuary; (4) To possess any explosives or fireworks; (5) To introduce any form of plant or animal life; (6) To start or maintain a fire; (7) To camp or erect any structure; (8) To enter into any area posted “No Trespassing Area”; (9) To remove, damage, or disturb any notice, sign, marker, fence, or structure; (10) To dump, drain, or leave any litter, toxic material, or other waste material except in trash receptacles or areas designated for the deposit of refuse; (11) To enter or remain upon any surfacewater area; (12) To park, land, or operate any air, water, or land vehicle except on roads and in areas designated for such use.” Thus, currently there are no rules regulating commercial use of the State Sanctuaries in Kailua Bay—Popoia Island and the Mokolua Islands.

1.4 Kailua Neighborhood Board Motion to Ban Commercial Activities at Kailua Beach Park

On June 1, 2006, the Kailua Neighborhood Board (KNB) approved a motion (by a vote of 12 to 4) to recommend to the City & County of Honolulu to prohibit commercial activities at Kailua Beach Park, except for filming and the snack bar. The motion specified that “especially important to prohibit are: (a) kayak rentals, instruction and

tours, (b) windsurfing rentals and instruction, (c) surfboard rentals, instruction and tours, (d) bouncers and carnival rides, (e) boogie board rentals and instruction, (f) weddings, (g) snuba rentals and instruction, and (h) delivery of rented equipment.” The bouncers and carnival rides, weddings, and snuba rentals and instruction sections were included in the motion at the request of the City Parks Department.

The motion was, in part, initiated based on the results of an informal KNB survey of about 150 people conducted in the Spring of 2004. To the question “Should there be commercial activities in Beach Parks in Kailua,” 33% of respondents said yes, 60% said no, and 7% had no opinion. For respondents who answered yes to this question there was a follow-up question: “...what types of regulated commercial activities should be allowed at Kailua Beach Park?” The majority of respondents said “drop off equipment (kayaks, windsurfing, etc.) rented elsewhere at a shop” (23% of respondents) and “one-on-one lessons in the use of watersports equipment (surfing, kayaking, windsurfing, etc.)” (23% of respondents). One additional survey question pertaining to this topic was “What are your main issues relating to parks and recreational opportunities in Kailua?” The majority of responders (21%) chose “conflicts in Beach Park use between casual, passive use (sunbathing, swimming, sandcastle building) and more active uses (windsurfing, kitesurfing, kayaking, etc.).”

A second informal mini-survey (of just 41 people polled) was conducted by the KNB in 2006. The question in the 2006 survey pertaining to commercial use was “Do you feel commercial activity is too little, just right, or too much [at Kailua Beach Park]?” Twenty-nine percent of respondents said too much, 66% said just right, and 5% said too little. Overall themes of respondents were “Commercial activities require enforcement and regulation for safety. Protect the offshore areas: Flat Island and the Mokulua Islands.”

A second motion introduced at the June 1, 2006 KNB meeting read, “The Kailua Neighborhood Board recommends that the City and County of Honolulu prohibit kite boards at Kailua Beach Park.” The motion failed (by a vote of 6 to 10).

Prior to adding the motion to ban kiteboarding to the agenda for the June 2006 meeting, the KNB had attempted to resolve complaints about kitesurfing at Kailua Beach Park in earlier meetings. Nine months prior, in September 2005, the Parks and Recreation Committee of the KNB met to discuss kiteboarder complaints. In October 2005, DLNR’s Administrator for DOBOR attended the KNB meeting to discuss kitesurfing and inter-jurisdictional regulation of the park. In December 2005, the KNB Parks and Recreation Committee submitted a motion to the board as follows: “In response to complaints concerning Kite Boarding at Kailua Beach Park, the KNB directs the Board’s Parks and Recreation Committee to observe and evaluate the effectiveness of the Hawaii Kite Boarding Association’s self-policing program for the next three months and report back to the Board.” The committee was advocating the OKC to self-police their sport at Kailua Beach Park for three months, which would then be reevaluated by the Kailua Neighborhood Board. The motion failed, 9-6-0, due to the lack of 10 votes required to pass the motion. Two months later, in February 2006, the board voted on the motion: “The KNB urges the State Department of Land and Natural Resources (DLNR) to issue licenses for kite boarders dedicating the license fees used to support State DLNR enforcement officers’ increased presence at Kailua Bay in an effort to increase safety in water sports activities at beaches.” The motion carried by a vote of 10 to 7. At that same

meeting the OKC submitted to the Kailua Neighborhood Board (and later to the DLNR) a proposal outlining alternative solutions to the board's motion of implementing a kiteboarder's license. The suggested alternatives included the posting of signs and buoys, allowing OKC's members to use courteous but efficient tools in order to enforce their self-policing management practice.

2. PRIMARY ISSUES OF CONCERN

According to Kailua Ocean Recreation Focus Group participants (hereafter referred to as "Focus Group" participants) the primary resource conservation issue needing to be addressed was impacts affecting the Mokulua Islands Sanctuary. The primary concerns relating to public safety and access were user conflicts in ORMA use zones, access to the offshore islands, and enforcement of the slow-no-wake zone. The topics of greatest concern relating to commercial ocean recreation activities were over-commercialization, permits and enforcement, a preservation fee, and the title of HAR chapter 251.

The Kailua Ocean Recreation Focus Group, facilitated by CSV Consultants, is comprised of individuals representing the following agencies, organizations, and businesses:

Federal Government: National Park Service (Pacific Islands Coral Reef Program)

State Government: Office of Hawaiian Affairs, DLNR (Office of the Chairperson, Division of Aquatic Resources, Division of Forestry and Wildlife, Division of Boating and Ocean Recreation, and Division of Conservation and Resource Enforcement)

County Government: City and County of Honolulu (Parks and Recreation, Emergency Services)

Non-Profits: Offshore Island Restoration Committee, Community Conservation Network, Oceanic Institute, Oahu Kite Club, and Kailua Hawaiian Civic Club

Businesses: Mokulua Kayak Guides, Naish Hawaii, Kailua Sailboards and Kayaks, Twogood Kayaks Hawaii Inc., and Hawaiian Watersports

Community Groups: Kailua Neighborhood Board (Chair and Parks and Recreation Committee Chair) and Kailua Chamber of Commerce

2.1 Resource Conservation

Mokulua Islands Sanctuary

Focus Group participants were concerned about impacts on wedge-tailed shearwaters at the Mokulua Islands Sanctuary. One problem is powerboats dropping off large numbers of people on the islands. Another problem is large numbers of kayakers landing on the island. While signage has been posted on the islands in an attempt to protect wedge-tailed shearwater burrows, these burrows are built on the ground and are vulnerable to fires, trampling by people, and attacks by dogs.

An Offshore Island Restoration Committee (OIRC) was established to help protect the sanctuary. This committee is comprised of various government agencies (including NOAA and DOCARE), businesses, and individuals within the community. One kayak company operating in Kailua donates a five dollar fee per guest to the Wildlife Society, Hawaii Chapter. This money is used to fund resource protection projects on the offshore islands within Kailua Bay. In addition, ongoing biological assessments are being conducted by DOFAW; current longevity studies show that, despite some problems with trampling, overall bird populations are healthy.

2.2 Public Safety and Access

User Conflicts in ORMA use zones

Although ORMA use zones are already established for Kailua Bay, Focus Group participants gave several examples of cases where user conflicts still occur. Some, they felt, were unavoidable due to the way the zones have been designed. For example, the swim zone includes the river drainage area where kayaks and canoes are launched, so although it is a designated swim zone it is receiving mixed use. Swimmers also regularly traverse the waters near the boat ramp, even while boats are launching and landing. Other conflicts include sunbathers and beach walkers conflicting with windsurfers and kiteboarders in the shoreline portion of the windsurf launch zone, and open ocean swimmers who stray into the windsurf zone while it is in use. The Oahu Kite Club expressed how difficult these open ocean swimmers can be to see, especially in rough, windy conditions which are the ideal conditions for kiteboarding. They would like to see the implementation of buoys marking the windsurfing ingress/egress zone.

While kiteboarding does have a very good safety record in Kailua (according to City and County of Honolulu, Emergency Services), some complaints are still being reported. Complaints that have been reported include kiteboarders jumping over kayakers or swimmers, and kiteboarders getting too close to surfers, fishermen, and snorkelers at Popoia Island. There is also concern about how fast they can go and concern about all of the lines and gear involved that other beach users could get entangled in. The City and County says that complaints about the sport are much less now (yr 2006) than three years ago (yr 2003), when there were more novices and problems included kites up in trees, in yards, crashing on people on the beach, and beach walkers stepping over their lines.

There is general consensus among Focus Group participants that behaviors that are dangerous should not be tolerated, and that courtesy must be maintained to keep user interactions safe.

Access

Some Focus Group participants were concerned that beach access has been limited, both at Popoia Island and at the Northern Mokulua Island, at times due to large guided tour groups taking up space and causing a cue of kayaks to form for individuals waiting to land. Individual unguided kayakers and canoers, many of whom are residents, feel they are being marginalized by tourism operations over access to these places.

Enforcement of slow-no-wake zone

Considering the volume and diversity of ocean recreation uses occurring within Kailua Bay, some Focus Group participants would like to see the slow-no-wake zone (that is within 200 feet of any shoreline, launching ramp, congested beach, swimmer, or diver's flag, per HAR §13-244-9) clearly marked with buoys and enforced. Some Focus Group participants, though, have concern that these regulations are not easily enforceable.

2.3 Commercial Ocean Recreation Activities

Over-commercialization

The Kailua Neighborhood Board (KNB) has emphasized, both in their summer 2006 meetings and in written communication with CSV Consultants, that the community is becoming over-commercialized. The board feels this is evidenced, in part, by

overcrowded parking conditions in Lanikai and at Kailua Beach Park, the billboard-like advertising of a local ocean recreation company on a parked van that remains in the parking lot for hours, and ocean recreation user conflicts. KNB representatives also commented that commercial activities are being conducted on public property, yet public recreation needs to come first. Commercial operators within the Focus Group contend that, by definition, commercial activity is providing and supporting public recreation.

Part of the debate is how commercial activity is being defined. Most people agree that a guided kayak tour qualifies as a commercial activity, but if a resident rents a kayak in town and then brings it down to the beach themselves, how is that defined? There have been difficulties in the past with interpretation of the language of HAR §13-256-3. Some Focus Group participants say it is unclear as to whether “all operators of commercial vessels, water craft or water sports equipment” includes private users who rent commercial equipment.

In the past, the KNB was supportive of limited, controlled commercial activities at Kailua Beach Park. The KNB recommended the issuance of a county temporary permit to a kayak company in 1993 for kayak drop-offs. However, in a climate of increasingly uncontrolled commercialism and rigorous marketing of Kailua Beach Park, the KNB has approved a motion to suggest to the City and County to ban all commercial use in the park (as discussed above).

The City and County recognizes the KNB recommendation to ban activities based on the concerns of many Kailua residents, but also acknowledges that the park is there to serve all people, whether they live in Kailua or not. The City and County wants to determine how to balance activities with the intrusion those activities pose to other users. They acknowledge there is a problem with tour buses parking at the beach park and taking up too many stalls. Currently there are no signs preventing them from parking there, and there are no signs preventing parking along the road by the stream.

Permits and Enforcement

Representatives from several ocean recreation commercial businesses in Kailua have expressed concern over the lack of a consistent commercial permit system. Some operators are paying fees for commercial use of water sports equipment in Kailua Bay through DOBOR and others are not. In the absence of consistent regulation and enforcement they refer to the situation as turning into “an open market”. Individuals are also renting kayaks out of their trucks or from their homes, conducting kiteboarding lessons, and renting surfboards, boogie boards, and snorkel equipment. A major concern is that these “renegade” operators are taking dangerous shortcuts, including operating with sub-standard equipment, not properly briefing customers, and not having insurance, in addition to not being accountable to the general public or to the City and County or state agencies by not having an actual physical place of business. There is also concern that these types of activities are increasing. This combination of poor business practices has, in some cases, resulted in safety issues. The press generated from these events inevitably reflects poorly on the industry as a whole. Safety concerns are just one component of the problem. These “renegade” operators also often lack the protocols that would help protect natural and cultural resources. Many operators feel that the implementation of a valid permit system and a sufficient enforcement presence would

resolve many of these problems, and that enforcement of other park laws, including bans on drinking and off-leash dogs would be beneficial.

In addition, there are many different levels of jurisdiction at Kailua Beach Park and adjoining beaches, including county jurisdiction, state jurisdiction, and private land. In addition, federal boating law applies within state waters. It can be hard for recreational and commercial users to know which agency regulates which areas. The general consensus of the Focus Group was that the State and the City and County need to work together to streamline permits and enforcement where these jurisdictions meet.

One concern is that the City and County of Honolulu is not currently providing annual permits for commercial windsurfing activities or enforcing illegal commercial operations (as is specified in Section 10-5.4 of the county ordinances) even though these activities are occurring. Another concern is that while there are county rules for issuing windsurfing permits, there are no similar rules for commercial kayaking, kiteboarding, or snorkel lessons/tours. Commercial operators within the Focus Group leading land, shore, and water-based kiteboarding lessons feel there is a need for a permit system, both at the City and County level and at the state level.

Preservation Fee

Some Focus Group participants felt that guided tours have the least amount of impact on the offshore island ecosystem when compared to unguided tours, because guided tours provide a means for educating people and having some influence over their behaviors. It was suggested that fees be collected from all kayak rentals, not just tours, and that these fees be used to contribute to the protection of the resource. It was recommended that a permit system designed to reduce impacts on offshore islands could collect a \$5 fee and use a tag system. A certain number of tags allowing access on the islands would be made available to kayak rental companies and tour companies. When a business has given out all of those tags, no others can visit the islands until the tags come back. A kayak may still be rented but it may not visit the islands without a tag. To implement this system in conjunction with the fee system, the tag could be purchased for \$5 and the money could go to the restoration fund.

Chapter 251 (Hawaii Administrative Rules)

Focus Sites participants were concerned about the title of HAR, Part III, Section 13, Chapter 251, entitled “Waikiki and Kaanapali Ocean Waters.” There has been confusion as to whether the rules in Chapter 251 apply statewide. These rules pertain to the issuance of commercial operator permits for water sports equipment, water craft, and commercial vessels and are based on Waikiki shore waters of the Hawaii Shore Waters Rules, effective November 6, 1981.

The Waikiki commercial zone was established to continue traditional activities and limit motoring in the area. In the 1980s this Waikiki model was applied to Ka’anapali on Maui because there was a mix of activities occurring there. These rules were initially written for Waikiki and Kaanapali, since these areas receive heavy use and multiple uses and were areas of high levels of commercial use. As ocean recreation activity has increased both commercially and recreationally across the state, many feel the intent of the law is to apply statewide to other areas also now receiving these types of uses. The limited

interpretation of this rule as only applying to Waikiki and Kaanapali has prevented the issuance of commercial operator permits to some operators in Kailua.

An additional concern about chapter 251 was that some interpret the wording to mean that the general public would need to have state permits even for private use (e.g., private kayaks, surfboards, fishing equipment, etcetera).

3. OTHER ISSUES OF CONCERN

Safety Concerns at the Mokulua Islands

There are also problems at the Mokulua Islands with people hiking around the back side of the north island and being swept off the rocks into the rough, wave impact zone below. Kayakers have drowned from getting into trouble in the rough waters surrounding the islands. The Ocean Safety Officers are nearly a mile away from the Mokulua Islands. There was a general consensus among the Focus Group that these safety issues need to be addressed.

Carrying Capacity Study

Some Focus Group participants suggested that a carrying capacity study should be conducted for Kailua Beach Park so that the number of commercial operator permits, if any, could be determined. A carrying capacity study, headed by a professor from Oregon State University, will be conducted there during the summer of 2007. While some participants felt that an appropriate number of commercial operators, if any, would reduce the perception that the area is over-commercialized, others argued that the issue is not so much the number of legitimate operators, but rather whether these businesses operate in a way that is appropriate for the community/environment by limiting the number of guests per tour, by contributing to the mitigation of impacts, etcetera.

4. PROPOSED RECOMMENDATIONS FOR THE KAILUA FOCUS SITE

Top priority recommendations for the Kailua Focus Site and their expected outcomes are presented in the tables below. Suggestions in the “other recommendations” table are secondary in importance. The first three tables mirror the DLNR hierarchy of uses: Table 1 contains proposed recommendations for resource conservation, Table 2 contains proposed recommendations for the enhancement of public safety and access, and Table 3 contains proposed recommendations for control of commercial ocean recreation activities. The final table, Table 4, is a comparison of different commercial operator permit issuance systems.

Table 1: Proposed Recommendations for Resource Conservation

Top Priority Recommendations	Expected Outcomes
Consider amending the ORMA rules to implement the following: No powerboat shall come within 200-300 yards or be used to access the Mokulua Islands	<ul style="list-style-type: none">• Less crowded conditions at the Mokulua Islands• Fewer parties, campfires, dogs• Better seabird protection

Involve the schools and marketing industry in building an educational campaign to shift the perception of the Mokulua Islands to that of a sanctuary rather than a prime area for recreation. A mailer, funded by a locally based kayak company in partnership with the OIRC, was sent out to roughly 350 Lanikai addresses over the last two years, educating residents of the negative impacts of outdoor lights during fledgling season. They have also designed a new poster, educating recreational users on how to mitigate impacts on the offshore islands. This poster has been distributed to a dozen potential points of contact (kayak rental shops, UH Manoa Recreation and Leisure program, and military bases), and will also shortly be distributed to schools in the area. Consider also strategically posting more signs (both on and off the islands) to keep dogs away from and to prevent fires at the Mokulua Islands to better protect wedge-tailed shearwaters and their burrows.	<ul style="list-style-type: none"> • Stronger sense of community ownership of the area • Increase awareness of sanctuary rules • Decreased incidences of dogs on the Mokulua Islands • Fewer incidences of burrow trampling
Continue biological assessments at the Mokulua Islands and establish a priority matrix for research surveys.	<ul style="list-style-type: none"> • Ability to assess the effectiveness of current management programs • Creation of a solid database of seabird population dynamics to inform future management decisions

Table 2: Proposed Recommendations for Enhancement of Public Safety and Access

Top Priority Recommendations	Expected Outcomes
Better delineate ORMA use zones. Mark the water portion of these ingress/egress zones with buoys and shoreline areas with cones or signs. In addition, mark the 200 feet from shoreline no-wake-zone in Kailua Bay with buoys and enforce.	<ul style="list-style-type: none"> • Increased compliance with ORMA rules • Increased ocean safety • Reduction in user conflicts, specifically: (1) fewer swimmers coming into contact with boats, kayaks and kiteboards, and (2) fewer conflicts between beach walkers, sunbathers, windsurfers, and kiteboarders at the windsurf launch area
Partner with non-profits, the counties, the marketing industry and others to conduct an ocean safety campaign. Encourage open ocean swimmers to wear brightly colored caps to be more visible to other ocean users and to emergency personnel	<ul style="list-style-type: none"> • Increased ocean safety
Other Recommendations	Expected Outcomes
Another suggestion was to conduct a risk assessment to determine if recreational activities should be allowed at the Mokulua Islands.	<ul style="list-style-type: none"> • Facilitation of a management decision as to whether or not ocean recreation activities (both commercial and non-commercial) are appropriate for the Mokulua Islands for the long-term.

Table 3: Proposed Recommendations for Commercial Ocean Recreation Activities

Top Priority Recommendations	Expected Outcomes
<p>If it is decided that a limited number of commercial ocean recreation operations will be allowed in Kailua Bay, these businesses could be regulated through a permit system (at both the county and state level), which stipulates good business practices (including pre-trip safety, environmental, and cultural briefings to guests and limited pick-up/drop-off times). County permits for windsurfing already exist, but are needed for kayaking, kiteboarding, and snorkeling tours/lessons. State permits are needed for all of these sports. Any commercial uses (whether kayak tours, snorkel trips, or windsurfing/kiteboarding lessons) that are allowed should contribute financially to education, protection, and enforcement efforts. For example, consider adding a \$5 (or similar) fee per guest for kayak tours to the Mokulus and a tag system only allowing a limited number of people to go there at a time. These fees could be given to the Wildlife Society, Hawaii Chapter, to administer so that they could be used locally.</p>	<ul style="list-style-type: none"> • A clear permit system would support enforcement efforts. • Better educated users and fewer user impacts on natural and cultural resources. • Increased safety. • Less congested parking at Kailua Beach Park • Financial support will improve management and enforcement efforts. • Improved business/community relations, especially if the funds are used for local projects. • Improved cultural and natural resource protection.
<p>Some Focus Group participants felt it may be counterproductive to “grandfather” existing companies into a permit system since this may be rewarding companies that do not historically adhere to sustainable use business practices. Another idea for permit distribution is to base the system on the track record of each individual company with regards to how well their priorities align with the DLNR hierarchy. For example, determine whether the company has a written environmental policy they adhere to.</p>	<p>See “Table 4: Comparison of Different Commercial Operator Permit Issuance Systems” below</p>
<p>Increase funding for and coordination of enforcement efforts among jurisdictions (i.e. police and DOCARE)</p>	<ul style="list-style-type: none"> • Faster response times and more efficient enforcement efforts • Higher levels of compliance in areas where more of an enforcement presence becomes established
<p>Partner with community “eyes & ears” groups like Mauka-Makai Watch and sports clubs to assist enforcement personnel in providing education, urging compliance, and reporting violations.</p>	<ul style="list-style-type: none"> • Faster and more frequent reporting of violations resulting in more efficient enforcement • Broader community support of enforcement • Better informed public • Volunteer opportunities for community members
<p>Encourage the County to install “no parking” signs for tour buses at Kailua Beach Park</p>	<ul style="list-style-type: none"> • Less congested parking at Kailua Beach Park

Clarify rules across jurisdictions to streamline the permitting process.	<ul style="list-style-type: none"> • Increased ease and less confusion for permittees • Increased cooperation between jurisdictions
Encourage commercial ocean recreation operators to partner with groups like CORAL to discuss ideas for establishing safety and resource protection protocols within the industry.	<ul style="list-style-type: none"> • Better working relationships within the industry, paving the way for cooperative agreements • Tapping into many combined years of experience/expertise results in better protocols • Better buy-in to protocols developed means a higher level of compliance
Revise the title of HAR, Chapter 251 to include all Hawaiian Waters so that these existing regulations for commercial operator permits can be applied to Kailua Bay.	<ul style="list-style-type: none"> • Will enable the DLNR to have more control over ocean recreation commercial operations in Kailua Bay. • Will clarify the law for the general public as well as within and between jurisdictions. • A clearer law will support enforcement efforts.

Table 4: Comparison of Different Commercial Operator Permit Issuance Systems

Type of Permit Issuance System	Perceived Benefits	Perceived Liabilities
<u>Sealed Bid System</u> : All qualified applicants meeting minimum requirements would submit sealed bids. Permits would be issued to the highest bidders.	<ul style="list-style-type: none"> • A fair system for distributing a limited number of available commercial operator permits. 	<ul style="list-style-type: none"> • Potential for existing businesses to be out-bid
<u>Request for Proposals (RFP) System</u> : Proposals would be submitted and rated based on a number of factors, including prior business experience, business registration, operational procedures, and “bid” price.	<ul style="list-style-type: none"> • Would allow for a more subjective review of qualifications beyond the fulfillment of basic requirements and amount of bid offered. 	<ul style="list-style-type: none"> • Requires a more lengthy administration process • Review process could be criticized as subjective
<u>On-line reservation system</u> : The system currently being used by Na Ala Hele Trails serves as a prototype for a way to limit the number of operators in a specific area without limiting the number of commercial operator permits issued. The on-line system would be on a first come, first served basis, but would not allow any particular company to sign up for too many areas.	<ul style="list-style-type: none"> • Businesses would need to qualify • Will accommodate new business start ups as well as established businesses • Puts a ceiling on the number of commercial ocean recreation operations allowed in a particular area. 	<ul style="list-style-type: none"> • Can not accommodate last minute bookings or changes in guest numbers • Does not accommodate sudden changes in weather or ocean conditions

<p><u>Non-transferable permits to all existing businesses:</u> Instead of limiting the number of permits issued, non-transferable permits would be issued to all currently qualified existing businesses. Then, with attrition, some permits would expire so that the number of permits would eventually align with carrying capacity. This is being done by Maui County for their new permitting system.</p>	<ul style="list-style-type: none"> • All qualified, existing businesses can receive permits 	<ul style="list-style-type: none"> • Does not accommodate new business start ups • Business permits cannot be transferred to family members • If attrition rates are slow then carrying capacity will not be met and overcrowding will occur • May not be appropriate for some overcrowded areas
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